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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,417	06/23/2003	Dean M. Walker	WALK.01USU1	9600

7590 09/26/2005

The Law Offices of William W. Cochran, LLC  
Suite 230  
3555 Stanford Road  
Fort Collins, CO 80525

EXAMINER
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PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/602,417	<b>Applicant(s)</b> WALKER, DEAN M.	
	<b>Examiner</b> Meredith C. Petravick	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*ke*

### **DETAILED ACTION**

1. Applicant's submitted new claims 2-4 in the amendment filed 7/15/2005, which are improperly numbered. Claims 2-3 were already previously pending before the restriction requirement of 12/29/2004 was made. Therefore, new claims 2-4 should have been numbered 4-6. Any claim listing in response to this Office Action should list the claims with the proper numbering; claim 1 should be listed with the claim identifier tag (cancelled), claims 2-3 should be listed with the claim identifier tag (withdrawn) and claims 4-6 should be listed as (new) or (currently amended) as required.

Until correction is made, new claims 2-4 submitted in the amendment filed 7/15/2005, will be referred to as claims 2-4 below.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 contains the following limitations., ""allow said tractor unit to make substantially zero radius turns," "said handle maintain a substantially constant elevational position" and "without substantial elevational movement." All of these limitations contain the relativistic term "substantial." It is unclear what the scope of the word "substantial" is in this invention since the specification does not describe what a substantially constant elevational

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position is, what substantial elevational movement is or what substantially zero radius turns are.

These limitations are indefinite.

***Claim Rejections - 35 USC § 103***

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,077,959 to Wenzle in view of U.S. Pat. No. 2,809,705 to Sewell and U.S. Pat. No. 3,154,903 to Smith.

Wenzle discloses a self propelled walk behind mower including:

- a tractor unit (11)
- an engine (19) mounted on the tractor unit
- hydrostatic drives (24) on the tractor unit
- drive wheels (17) coupled to the hydrostatic drives
- handles (31) that extend rearwardly

Wenzel also describes attaching a mowing deck to the front of the tractor unit but does not describe how it is attached. Wenzel does not describe providing a third wheel pivotally attached to the middle of the rear of the tractor unit.

Like Wenzel, Sewell discloses a mower having a unit with two drive wheels (2). Unlike Wenzel, Sewell provides a pivoting wheel (3) at the rear of the middle of the mower. This supports the mower.

Also like Wenzle, Smith discloses a mower with a tractor unit and a mower deck attached to the front. Unlike Wenzle, Smith describes of the mower is attached. Smith provides deck attachment arms (the combination of 111, 47, 55, 57 and the combination of 112, 56, 48, 54) on

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the tractor unit and receivers (ends of 46) on the mowing deck. The deck also has two wheels (18). The attachment arms allow the mower deck to pivot transversely and longitudinally so that the mower follows the contours of the ground without having the tractor unit move. Smith teaches that this is advantageous to avoid uneven grass cutting (Col. 1, lines 16-28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tractor unit of Wenzle with a third pivotable wheel as in Sewell in order to further support the tractor unit and to make the mower deck of Wenzel attach like the mower deck of Smith, in order to avoid uneven grass cutting.

Regarding claim 3, Smith discloses a deck attachment receiver (14).

Regarding claim 4, Smith discloses a suspension (includes 12).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 2-4 have been considered but are moot in view of the new grounds of rejection. The references have been recombined in a new way in response to Applicant's amendment. How the references meet each limitation is pointed out above.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

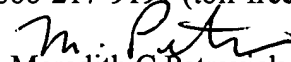
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C. Petravick whose telephone number is 571-272-6995. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Meredith C Petravick  
Primary Examiner  
Art Unit 3671

September 22, 2005